

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

HUBERT LUSK,

Petitioner,

v.

**Civil Action No. 2:10cv5
(Judge Maxwell)**

DAVID BALLARD, Warden,

Respondent.

**OPINION/REPORT AND RECOMMENDATION
THAT PETITIONER'S APPLICATION TO
PROCEED IN FORMA PAUPERIS BE DENIED**

All litigants are required to pay the costs and fees associated with civil lawsuits unless their financial condition warrants a grant of *in forma pauperis* status pursuant to 28 U.S.C. § 1915. Therefore, if a petitioner submits a certified copy of his trust fund statement for the six-month period immediately preceding the filing of the action, then the Court may consider his request. This case is before the undersigned on the petitioner's January 14, 2010, Application to Proceed Without Prepayment of Fees and certified inmate account statement.

The petitioner's application and trust account statement show that he is employed by the facility where he is housed and earns approximately \$85.00 per month. In addition, although the petitioner has not received any money from outside sources in the last six months, and he asserts that he has no assets, the average daily balance in his inmate account has been approximately \$4900. Moreover, at the time this case was filed, the petitioner's inmate account contained approximately \$5000.

The filing fee for a habeas corpus action is only \$5.00 and there are generally no other fees

or costs associated with this type of action. Accordingly, the undersigned recommends that the petitioner's request to proceed as a pauper (dckt. 2) be **DENIED** and the petitioner be directed to pay the full filing fee. The petitioner should also be warned that the failure to pay the full filing fee within the time allowed by the Court could result in the dismissal of his case.

Within fourteen (14) days after being served with a copy of this Opinion/Report and Recommendation, the petitioner may file with the Clerk of the Court, written objections identifying those portions of the recommendation to which objections are made, and the basis for such objections. A copy of such objections shall also be submitted to the Honorable Robert E. Maxwell, United States District Judge. Failure to timely file objections to the recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk of the Court is directed to mail a copy of this Opinion/Report and Recommendation to the *pro se* petitioner by certified mail, return receipt requested, to his last known address as shown on the docket.

DATED: January 15, 2010.

John S. Kaull
JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE